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6 **THE UNITED STATES DISTRICT COURT**
7 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
8 **SAN JOSE DIVISION**

9 **MITCHELL J. PLAINTIFF, D.C., M.S.,**
10 **L.Ac.,**

11 **Plaintiff,**

12 **vs.**

13 **CAROL ROMEO, et al.,**

14 **Defendants.**

Case No.: C02 04011 RMW

**ORDER FOR PERMISSION TO
SUBMIT BRIEF OVER 25 PAGES IN
OPPOSITION TO RULE 12(b)(6)
MOTION TO DISMISS BY
DEFENDANTS CAROL ROMEO; JAMES
SHARP; VIVIEN HERSH; LYDIA ZANE;
JOEL PRIMES; R. LLOYD FREISEN,
D.C.; MICHAEL MARTELLO, D.C.;
LLOYD BOLAND, D.C., DEBORAH E.
PATE, D.C.; JOHN BOVEE, D.C.;
SHARON UFBERG, D.C.; JEFFREY
STEINHARDT, D.C.; STEPHEN
FOREMAN, D.C.; JACALYN
BEUTTNER, D.C.; CRAIG MISSAKIAN,
J.D.; JOHN DERONDED, D.C.; M.
ELIZABETH WARE; ROBERT
BOURKE; GAYLYN MACHADO; C.
BRETT SULLIVAN, D.C.; LAWRENCE
MERCER; PETER BERMAN, D.C.;
PATRICIA BRICKMAN**

Date: October 14, 2005

Time: 9:00 a.m.

Courtroom: 6 — Fourth Floor

Judge: The Honorable Ronald M. Whyte

22 Pursuant to Local Rule 7-4(b), Plaintiff requests permission to file brief in excess of 25
23 pages. State Defendants submitted a 26 page memorandum that incorporated a previously
24 written 25 page memorandum in its entirety, giving Plaintiff a total of 50 pages of memoranda to
25 respond to. In addition, State Defendants incorporated by reference a previously submitted
26 request for judicial notice that is more than an inch thick. Although several of State Defendants
27 arguments are supported by a paucity of authority, Plaintiff's opposition is supported by an

1 abundance of authority. It takes more space to cite and explain the application of existent
2 authority than it does to cite to no authorities. There are new issues in State Defendants' brief
3 that have not been argued before. Finally, the decisions on issues State Defendants raise hinge
4 on a full understanding of the facts of the case, which span a decade, and how these several
5 specific fact patterns involving various combinations of 25 defendants, provide specific
6 exceptions to the immunities State Defendants wish could be broadly mis-applied to them. Just
7 reciting the facts so that the lack of immunity is clear with regard to each of 25 defendants takes
8 paragraphs. Defendants made no attempt to elucidate these facts in their papers.

9 Dated: September 22, 2005

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M. VAN SMITH
11 Attorney for Plaintiff
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14 **ORDER**

15 Upon the application of Plaintiff, and finding good cause therefore, the court grants
16 Plaintiff permission to file a brief up to 35 pages in length. The Court does not intend to (rmw)
17 consider defendant's incorporated by reference brief.

18 Dated: 9/27/05

/S/ RONALD M. WHYTE

19 Ronald M. WHYTE
20 UNITED STATES DISTRICT JUDGE
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